IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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R.S.A. No. 5755 of 2003

Date of decision: 5.9.2006

Gopi Ram and another --- Appellant

Versus

Hardayal Singh and others --- Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Rajeev Godara, Advocate for the appellants.

Mr. L.N. Verma, Advocate for respondents Nos. 1 and 2.

Mr. Arun Palli, Advocate for respondent No.3.

JUDGMENT

This is plaintiffs' second appeal who remained unsuccessful before both the courts below. A suit for declaration was filed seeking a decree to the effect that the plaintiffs were in joint possession of 17 Marlas of land of Khasra No. 863, out of Plot No. 341/172 against Hardayal Singh and others (defendants) and the revenue entries showing plaintiff No.1 and defendant No.1 to be lessees in possession of the suit land were illegal, null and void. Further prayer was also made for a decree of permanent injunction restraining the defendants from interfering in the possession of the plaintiffs over the suit land. Suit was contested. by defendant Nos. 1 and 3 only. Averments made by the plaintiffs were controverted. It was pleaded on behalf of defendant No.1 that Amarditta Mal had no authority to transfer the possession of the land to the plaintiffs and writing dated 1.4.1978 alleged to have been executed by Amarditta Mal in favour of the plaintiffs did not pertain to

the land in dispute. It was further stated that defendant No.1 is in possession of the suit land for the last 12 years and is a lessee under the Wakf Board. He also claimed that there is a lease deed in his favour. Defendant No.3 in a separate written statement denied the claim of the plaintiffs. As per averments in the written statement, defendant No.1 is in possession of the suit land as tenant under defendant No.3.

The rival contentions between the parties gave rise to the following issues:

1- Whether the plaintiffs are in joint possession of the suit land detailed in para (a) of the head note of the plaint, if so, to what effect? OPP

2- Whether the plaintiffs deserve for relief of permanent injunction? OPP

3- Whether the suit of the plaintiffs is not maintainable in the present form? OPD

4- Whether the defendant No. 1 is in possession over the plot as a tenant under defendant No.3? OPD

5- Relief.

Trial court on appreciation of evidence while adjudicating issue No.1 in para 14 of the judgment noted as under:-

> "I have already alluded to the case of the plaintiffs. The case of the plaintiffs is that one Amarditta Mal was in possession of the suit land as a lessee under the Punjab Wakf Board. Shri Amarditta Mal had sold the Malba in respect of the suit land in their favour. Shri Amarditta Mal had also executed a writing on 1.4.1978 in favour of the plaintiffs. The said writing has been produced on the record as Ex. P-1. I am of the considered opinion that the plaintiffs cannot claim to be in possession of the suit land on the basis of writing Ex.P.1. First of all, there is no evidence on the record that Shri Amarditta Mal was inducted as a tenant by the Punjab Wakf Board. No lease deed alleged to have been executed by the Wakf Board has been proved on the record. That apart, said Amarditta Mal has also not been examined by the plaintiffs to prove that writing Ex. P-1 was executed by him in favour of the plaintiffs. Even in writing Ex. P-1, the khasra number 663 has been mentioned,

> whereas, the suit land bears khasra no. 863. This also shows that writing Ex. P-1 does not pertain to the suit land. There is no denying the fact that the plaintiffs have produced on the record receipt Ex. P-8 alleged to have been executed by the Punjab Wakf Board in favour of Shri Ganga Bishan, one of the plaintiffs. But, I am of the considered opinion that this receipt alone cannot clothe the plaintiffs with the legal right when there is no evidence on the record, apart from this receipt, showing that the plaintiffs are in possession of the suit land under the Wakf Board. In these circumstances, I am of the considered view that the plaintiffs have tried to prove their claim on the basis of false and fabricated evidence. There is nothing on the record that they are in joint possession of the suit land. Accordingly, I find this issue in favour of the defendants and against the plaintiffs.

On the basis of this finding, issue Nos. 1 and 2 were decided against the plaintiffs. Under issue No.4, it was held that defendant No.1 was a lessee under the Punjab Wakf Board- defendant No.3. Suit was consequently dismissed. The first appellate court on re-appreciation of evidence concurred with the findings of the trial court and observed thus:-

> "So, the learned lower court has rightly held that the defendant No.1 is in possession of the plot in dispute as a lessee and that the plaintiffs have no concern whatsoever with the ownership and possession of the plot in dispute. So, the findings of the learned lower court on all the issues under adjudication are hereby affirmed."
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> The appeal was accordingly dismissed.

Learned counsel for the appellants submitted that the findings returned by the trial court and as affirmed by the first appellate court are not based on correct appreciation of the evidence and if the same are examined in the light of the evidence led by the parties, the pleas of the plaintiffs would be found to be correct. Counsel appearing on behalf of the respondents, however, supported the findings arrived at by the courts below.

I have heard learned counsel for the parties and gone through the record. The findings recorded by both the courts below are concurrent findings of fact based on appreciation of evidence oral as well as documentary. In view of the law laid down by the Apex Court in **Kondiba Dagadu Kadam Versus Savitri Bai Sapan Gujar and others**, **A.I.R. 1999 SC 2213,** learned counsel for the appellants was called upon to indicate substantial questions of law which arise for determination in this Regular Second Appeal. But the counsel could not pinpoint any substantial question of law or any error of law in the judgments and decrees passed by both the courts so as to persuade this Court to interfere in second appeal. No question of law, much less a substantial question of law arises in this appeal for the consideration of this Court. The appeal is consequently dismissed.

(AJAY KUMAR MITTAL)
JUDGE

September 5, 2006
MALIK